HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

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WRIT PETITION No:15665 OF 2007

Dated: 26.7.2007

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Between:

1. The Superintendent of Police,
   Medak District at Sangareddy and another.

..Petitioners

And

Md. Jahanghir. ..Respondent.

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:15665 OF 2007

ORDER: (Per the Honourable Smt. Justice T.Meenakumari)

This writ petition is filed challenging the order of the Tribunal dated 02.04.2007 in O.A.No.3451 of 2003 and batch.

The respondent herein is the applicant before the Tribunal. He filed the above O.A. seeking to call for the records including the proceedings of the 1st respondent therein in DP.NO.1755/02 (A6/PR/25/98) dated 7.9.2002 and the proceedings of the 2nd respondent therein in RC.No.330/Appl-89/HR/2003, dated 18.2.2003 and quash the same as illegal and arbitrary.

The brief facts in the O.A., are that the applicant, who was working as Police Constable, was placed under suspension vide proceedings dated 27.4.1998 on the allegation of illegal gratification. In that connection, criminal proceedings and departmental enquiry were also launched against him. In criminal proceedings, he was acquitted. Insofar as departmental enquiry is concerned, P.Ws.1 to 5 were examined. While so, after completion of oral enquiry, a notice dated 2.7.2001 along with the statements of P.Ws.1 to 5 have been served on the applicant on 24.7.2001 to submit his explanation and thereafter, the enquiry officer submitted his report dated 11.9.2001 holding that the charges are proved and basing on which, penalty of removal was imposed. Having aggrieved by the same, the O.A. was filed.

The tribunal having observed that the procedure adopted by the enquiry officer with respect to the service of notices is not in accordance with Rule 42 of APCS (CC&A) Rules and the enquiry is not in consonance with the mandatory provisions of the Rules, set aside the orders impugned therein and directed the respondents

therein to reinduct the applicant into service forthwith. Having aggrieved by the same, the present writ petition is filed by the petitioners, who are respondents in the above O.A.

Heard and perused the material available on record.

It is the case of the petitioners that the departmental proceedings cannot be set aside merely on the ground of acquittal in a criminal case for the reason that the standard of proof in a criminal case and the departmental proceedings is distinct. It is further contended that the applicant was provided with four months time to defend himself, but he failed to utilize such opportunity and therefore, the enquiry officer conducted enquiry under Rule 20 of APCS (CC & A) Rules, which was proportionate according to the rules. It is also contended that in spite of service of notice on the applicant to attend before the enquiry officer, he did not attend and therefore, the question of sending the notices to the applicant does not arise and hence, the tribunal is not justified in setting aside the orders impugned therein.

On a perusal of the order impugned, it is obvious that the tribunal after going into the merits of the case observed that the procedure as contemplated under Rule 42 of the APCS (CC&A) Rules was not followed in the instant case and the applicant was not afforded any opportunity to cross-examine P.Ws.1 to 5 and set aside the orders impugned therein and directed the petitioners herein to reinstate the applicant. The applicant filed the above O.A. seeking to set aside the proceedings impugned therein questioning the notice and on the ground that he was not given any opportunity to cross-examine P.Ws.1 to 5.

Be that as it may.

There is no dispute as to the non compliance of the provisions of Rule 42 of APCS (CC& A) Rules with regard to the notice and as to

the non affording of any opportunity to the applicant to cross examine P.ws.1 to 5. In this background of the matter, We feel it a fit case wherein the matter can be remanded to the Enquiry Officer, so as to enable him to complete the enquiry after complying with the provisions as contemplated under the CCA Rules in question. Therefore, the tribunal is not justified in passing the order impugned.

Accordingly, W.P. is disposed of setting aside the order impugned herein as well as the orders impugned therein and consequently, the matter is remanded to the Enquiry Officer so as to complete the enquiry after complying with the provisions as contemplated under the CCA Rules in question. Further, it is made clear that notice shall be served on the applicant in accordance with Rule 42 of APCS (CC&A) Rules and likewise, the applicant shall be afforded an opportunity enabling him to cross-examine P.Ws.1 to 5.

However, it is needless to observe that the Enquiry Officer may proceed with the enquiry from the stage of issuing notice in consonance with the Rule 42 of the Rules and the entire enquiry proceedings shall be completed within a period of six months from the date of receipt of a copy of order, in accordance with law.

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Justice T. Meena Kumari

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Justice G. Chandaiah

Date: 26th July, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI

&

HONOURABLE SRI JUSTICE G. CHANDRAIAH

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WRIT PETITION No:15665 OF 2007

(Order of the Division Bench delivered by Smt. Justice T.Meenakumari)

Dated: 26.7.2007

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